

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-462-C

| | | |
|---|---|-----------------------------|
| In Re: |) | |
| Application of Network Innovations, Inc. |) | |
| for a Certificate of Public Convenience |) | |
| and Necessity to Provide Resold Intrastate |) | |
| Interexchange Telecommunications |) | SETTLEMENT AGREEMENT |
| Services and Alternative Regulation of its |) | |
| Interexchange Service Offerings |) | |

This Settlement Agreement ("Settlement Agreement") is made by and among the Office of Regulatory Staff ("ORS") and Network Innovations, Inc. ("Network" or "the Company") (collectively referred to as the "Parties" or sometimes individually as "Party");

WHEREAS, on December 31, 2008, the Company filed its Application requesting: (i) a Certificate of Public Convenience and Necessity be granted authorizing the Company to provide resold interexchange services, specifically point to point and dedicated private line type services, throughout the State of South Carolina; (ii) alternative regulation of its interexchange services and private line services consistent with Orders 95-1734 and 96-55 in Docket No. 96-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C; (iii) for waiver of certain Commission Regulations, specifically Regulation 103-610 regarding location of records; and (iv) a waiver of any requirement to maintain financial records in conformance with the Uniform System of Accounts ("USOA") because the Company utilizes Generally Accepted Accounting Principles (GAAP) to maintain its books and records;

WHEREAS, on January 6, 2009, counsel for ORS entered a Notice of Appearance in this

matter;

WHEREAS on January 7, 2009, the Commission issued a Notice of Filing and Hearing and established a return date of February 6, 2009, for the filing of letters of protest or petitions to intervene and established a hearing date of March 23, 2009, for the application to be heard before a hearing examiner;

WHEREAS, on January 7, 2009, the Commission issued its Order No. 2009-6 by which the Commission appointed David Butler, Esquire as the Hearing Examiner in this matter;

WHEREAS, on February 12, 2009, Hearing Examiner Butler issued a directive setting forth a new prefiling schedule which allowed for a three day extension for all deadlines at the Company's request;

WHEREAS, on February 12, 2009, the Company pre-filed the direct testimony of Rick Stern with the Commission;

WHEREAS, the purpose of this proceeding is to review the application filed by the Company and its requests: (i) for a Certificate of Public Convenience and Necessity to provide resold interexchange services, specifically point to point and dedicated private line services, within the State of South Carolina; (ii) for alternative regulation of its interexchange services consistent with Orders 95-1734 and 96-55 in Docket No. 96-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C; (iii) for waiver of certain Commission Regulations, specifically Regulation 103-610 regarding location of records; and (iv) for waiver of any requirement to maintain financial records in conformance with the USOA;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical, managerial, and financial expertise of the Company to provide the services requested in the Application;

WHEREAS, ORS has reviewed the Application and the financial data provided by the Company, and ORS has calculated certain performance ratios based upon information provided by the Company;

WHEREAS, ORS has investigated the services to be offered by the Company and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs submitted by the Company;

WHEREAS, ORS has reviewed the prefiled testimony of Rick Stern;

WHEREAS, as a result of its investigations, ORS has determined: (a) the Company intends to offer point-to-point and private line services on a resold basis throughout the state of South Carolina; (b) the Company does not intend to offer prepaid calling cards or any switched interexchange services; (c) the Company's officers possess sufficient technical and managerial abilities to adequately provide the services applied for; (d) based upon the information provided, the Company appears to have access to sufficient financial resources necessary to provide the services proposed in its application; (e) the Company's proposed tariffs with the amendments as agreed to in this Settlement Agreement comply with Commission statutes and regulations; (f) the services provided by the Company will meet the service standards required by the Commission; (g) the provision of services by the Company will not adversely impact the availability of affordable telecommunications services; (h) to the extent it is required to do so by the Commission, the Company will participate in the support of universally available telephone service at affordable rates; and (i) the provision of services by the Company will not adversely impact the public interest;

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1) The Parties agree that the Company's Application and exhibits to the Application are incorporated into this Settlement Agreement and made a part hereof;

2) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the pre-filed testimony of the Company's witness Rick Stern without cross-examination by ORS;

3) The Company has submitted financial data, which was provided as Exhibit C to the Application and which financial data is incorporated by reference;

4) The Parties agree that the Company should be granted a Certificate of Public Convenience and Necessity to provide resold interexchange telecommunications services within the state of South Carolina;

5) The Company has requested a waiver of 26 S.C. Code Ann. Regs. 103-610 concerning the location of books and records. However, S.C. Code Ann. §58-9-380 (Supp. 2007) provides that:

Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers and records as shall reasonably be required by the Office of Regulatory Staff. No books, accounts, papers or records required by the ORS to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

ORS is agreeable to allowing the Company to maintain its books and records outside of the State of South Carolina in exchange for the Company agreeing to provide access to its books and records. ORS is agreeable to the Company maintaining its books and records at its principal offices in the State of Illinois, and the Company agrees to notify the ORS of any change in the

location of the principal office or in the location where the books and records are maintained. This provision of the Settlement Agreement shall not be construed as a waiver by ORS of S.C. Code Ann. § 58-4-55 (Supp. 2007) or § 58-9-1070 (Supp. 2007). ORS expressly reserves its rights to require the production of books, records, and other information located within or outside of the State of South Carolina in order to carry out its duties and compliance with any state or federal regulation;

6) The Company has requested a waiver of any rule or regulation that might require a carrier to maintain its financial records in conformance with the USOA. The Company acknowledges that S.C. Code Ann. § 58-9-340 (Supp. 2007) provides that the ORS may, in its discretion and subject to the approval of the Commission, prescribe systems of accounts to be kept by telephone utilities subject to the commission's jurisdiction and that the ORS may prescribe the manner in which the accounts shall be kept and may require every telephone utility to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the ORS. The Company agrees to keep its books, papers, and records in such a manner that permits ORS to audit its revenues and expenses for compliance with programs such as but not limited to the Universal Service Fund ("USF"), the Interim LEC Fund, and gross receipts. The Company agrees to complete the reporting forms for programs such as but not limited to the annual report, USF, Interim LEC, and gross receipts as may be required by the ORS of telecommunications companies certificated to operate within South Carolina and as the reporting forms may be amended from time to time;

7) ORS does not oppose the Company's requests: (a) for alternative regulation of its interexchange private line service offerings consistent with the procedures described and set forth in Orders 95-1734 and 96-55 in Docket No. 96-661-C as modified by Order No. 2001-997

in Docket No. 2000-407-C, specifically (i) regulation of these services listed above in the same manner as these services are regulated for AT&T Communications of the Southern States, Inc., (ii) removal of the maximum rate tariff requirements for Network's private line offerings; (iii) presumptively valid tariff filings for these interexchange services unless an investigation of a particular filing is instituted within seven (7) days, in which case the tariff filing will be suspended until resolution of the investigation or until further order of the Commission; and (iv) allowing Network the same treatment as AT&T Communications of the Southern States, Inc. in connection with any future relaxation of reporting requirements;

8) The Company agrees to resell the services only of those carriers authorized to do business in South Carolina by the Commission. The Company agrees to notify ORS and the Commission, in writing, if it changes its underlying interexchange carriers;

9) The Company agrees that it will allow an end-user of resold services to access an alternative interexchange carrier or operator service provider if the end-user expresses such a desire;

10) The Company agrees to file necessary financial and/or other information with the ORS and the Commission for universal service fund reporting, interim LEC fund reporting, annual reporting, gross receipts reporting, and/or any other reporting which may now or in the future be applicable to telecommunications providers such as the Company. The Parties agree that such reports shall be filed pursuant to ORS's instructions and monies shall be remitted in accordance with the directions of the ORS and the Commission requirements.

11) The Company agrees to maintain its books and records in a manner that would permit ORS to examine any of its reports filed with the Commission and provided to ORS.

12) The Company agrees to file with the Commission and ORS a completed

authorized utility representative form within thirty (30) days of the Commission's order.

13) In the event the Company offers prepaid calling card services in the future, it agrees that it shall post a surety bond or certificate of deposit for prepaid services in the amount of \$5,000 as required by the Commission;

14) In the event the Company's business plan changes to include the provision of switched interexchange services, the Company agrees to comply with the verification regulations governing change of preferred carriers as established by Federal Communications Commission ("FCC"). In addition, in the event that the Company offers long distance services to end users, the Company agrees to comply with the marketing practices and guidelines established by the Commission in Order No. 95-658;

15) The Company agrees to comply with South Carolina Code Section § 58-9-300 entitled "Abandonment of Service." Additionally, to the extent applicable, the Company agrees to adhere to the FCC's rule 47 C.F.R. §§ 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, the Company shall remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;

16) The Company agrees to comply with all rules and regulations of the Commission unless the Commission has expressly waived such rule or regulation;

17) The Company agrees to file a final revised tariff with both the ORS and the Commission and the revised tariff shall reflect and be in accordance with ORS's recommendations as set forth in the summary attached as Exhibit 1 to this Settlement Agreement.

18) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

19) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein.

20) The Parties represent that the terms of this Settlement Agreement are based upon full and accurate information known as of the date this Settlement Agreement is executed. If, after execution, either Party is made aware of information that conflicts, nullifies, or is otherwise materially different than that information upon which this Settlement Agreement is based, either Party may withdraw from the Settlement Agreement with written notice to the other Party;

21) The Parties agree that signing this Settlement Agreement will not constrain,

inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement in its entirety without penalty or obligation.

22) This Settlement Agreement shall be interpreted according to South Carolina law.

23) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

WE AGREE:

Representing the Office of Regulatory Staff

Shealy Boland Reibold
Shealy Boland Reibold, Esquire
Office of Regulatory Staff
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Telephone: (803) 737-0863
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2/26/09
Date

WE AGREE:

Representing Network Innovations, Inc.



Scott Elliott, Esquire
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February 20, 2009
Date

Recommendations for Network Innovations Interexchange Tariff

Original Title Page—The Company should include a regulatory contact phone number on the Title Sheet.

Section 1-Technical Terms and Abbreviations

Original Page 7 1.1—The Company should include the following definition—“ORS—The South Carolina Office of Regulatory Staff”.

Section 2-Rules and Regulations

Original Page 20 2.8.3—The Company should delete in its entirety and replace with the following language—“Simple interest on deposits at the rate not less than that as prescribed by the Commission shall be paid by the telephone utility to each customer required to make such deposit for the time it is held by the telephone utility.” (SC Reg. 103-621.3)

Original Page 21 2.10.1—The Company should modify the second paragraph as follows—“Second, if there is still disagreement about the disputed amount after investigation and review by the Company, the Customer, within ten days of the notification or mailing of the Company’s written summary of the findings or resolution of the dispute, a complaint may be filed with the South Carolina Office of Regulatory Staff, 1401 Main Street, Suite 900, Columbia, South Carolina 29201, telephone (803) 737-5230, toll free 1-800-922-1531 in accordance with the Commission rules of procedure. The Public Service Commission of South Carolina shall have primary jurisdiction over customer complaints.”

Original Page 21 2.11—The Company should modify the sentence as follows—“State and local sales, use and similar taxes are billed as separate line items and are not included in the quoted rates.”

Section 3-Description of Service

Original Page 26 3.6.2—The Company should include the following language at the end of the paragraph—“The amount of the Bad Check Charge shall not exceed the amount prescribed in S.C. Code Ann. § 34-11-70.”

Original Page 26 3.7—The Company should modify the final sentence in the paragraph as follows—“The Company will file a letter describing the promotion with the PSC and ORS in lieu of filing language in the tariff.”

Section 4-Rates and Charges

Original Page 31 4.3—The Company should correct the incorrect numbering found is 4.3 (i.e. subsections 3.8.1-3.10.8)

Original Page 31 3.10.4—The Company should remove the “Billing Fee” or provide a description of the necessity for a “Billing Fee”.

Original Page 31 3.9—The Company should correct the numbering in 3.9.

Additional Recommendations for the Tariffs

- 1) If the Company charges any installation, connection, maintenance, or termination charges, etc. (in addition to the services listed in the tariff), these additional charges and the descriptions of the charges should be listed in the tariff with their current and maximum rates.**
- 2) The Company should also provide tariffs and tariff revisions to the South Carolina Public Service Commission as well as the South Carolina Office of Regulatory Staff (S.C. Code Regs. 103-629).**
- 3) If the Company’s Services involve Prepaid Calling Cards, the Company will be required to post a \$5, 000 Surety Bond with the Public Service Commission.**
- 4) The Company is applying for Modified Alternate Regulation by the PSC for its Interexchange tariff. As a general rule, the Company should include maximum rates and current rates for any service that may impact residential customers. Any services that impact Business Long Distance, Consumer Cards, and Operator Services (Including Directory Assistance) are exempt from maximum rates. Only current rates would need to be filed for these services.**
- 5) The Company should include language as it relates to Marketing Practices (SC PSC Order 95-658).**

As a telephone utility under the regulation of the Public Service Commission of South Carolina, the Company hereby asserts and affirms that as a reseller of intrastate telecommunications service, the Company will not indulge or participate in deceptive or misleading telecommunications marketing practices to the detriment of consumers in South Carolina, and the Company will comply with those marketing procedures, in any, set forth by the Public Service Commission. Additionally, the Company will be responsible for the marketing practices of its contracted telemarketers for compliance with this provision. The Company understands that violation of this provision could result in a Rule to Show Cause proceeding as to the withdrawal of its certification to complete intrastate telecommunications traffic within the state of South Carolina. (Commission Order 95-658).

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-462-C

| | | |
|---|---|-----------------------|
| IN RE: |) | |
| Application of Network Innovations, Inc. for a |) | CERTIFICATE OF |
| Certificate of Public Convenience and Necessity |) | SERVICE |
| to Provide Resold Intrastate Interexchange |) | |
| Telecommunications Services and Alternative |) | |
| Regulation of Its Interexchange Service Offerings |) | |

This is to certify that I, Chrystal L. Morgan, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **SETTLEMENT AGREEMENT** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Scott Elliott, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, SC, 29205

Judith Riley, Regulatory Consultant
Telecom Professionals, Incorporated
5909 N.W. Expressway, Suite 101
Oklahoma City, OK, 73132



Chrystal L. Morgan

February 26, 2009
Columbia, South Carolina